Greensboro News Company and Greensboro Newspaper Guild, Local 80, affiliated with the Newspaper Guild, AFL-CIO, CLC, Petitioner. Case 11-RC-4956

August 13, 1981

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Stipulation for Certification Upon Consent Election, ¹ a secret-ballot election was held on February 13, 1981. ² The tally of ballots showed that, of approximately 70 eligible voters, 27 cast ballots for, and 37 cast ballots against, representation by the Petitioner. There were five challenged ballots, an amount insufficient to affect the outcome.

The Petitioner timely filed objections to the conduct of the election.

Following an investigation of the objections, the Acting Regional Director issued his Report on Objections recommending that the Petitioner's Objection 3 be sustained, and that a second election be conducted. The Board has reviewed the Acting Regional Director's report in light of the Employer's exceptions and brief, and adopts his findings³ and recommendations, as modified by this Decision.

The Acting Regional Director found that the Employer's statements to employees during the campaign warranted sustaining Objection 3. We agree.

On February 5 the Employer gave a speech to the employees that included the following:

A union would be bad for me, too. At present, your supervisors and I can deal with you as individuals with regard to any aspect of your employment—wages, benefits, hours, and problems.

If the Union comes in, the Union will be your representative and we must deal with them, not you.

Further, in a series of communications during the campaign the Employer advised employees that if they selected the Petitioner as their representative "it will be bad for all of us" and that they will all be "worse off."

Section 9(a) of the Act expressly preserves the employees' right to approach management direct-

1 The stipulated unit is:

ly. The Acting Regional Director found the Employer's speech with respect to the right to approach management objectionable because it contradicts Section 9(a). However, the Acting Regional Director characterized the speech as a mere misrepresentation of the law. We conclude that the speech, read in the context of the Employer's statements that employees would be worse off, could reasonably be construed as a threat to deprive employees of their right to deal directly with the Employer. Associated Roofing & Sheet Metal Co., Inc., 255 NLRB 1349 (1981).

The speech was not, as the Employer contends, an explanation of the "fact[s] of industrial life." Rather, it was an improper threat by the Employer to terminate the existing beneficial situation. While an employer may explain that with union representation the union will be a participant in employeremployee relations generally, an employer cannot threaten to retaliate against its employees' selection of a union representative by cutting off the employees' Section 9(a) right to deal directly with management.

The Employer argues that it did not threaten its employees but merely stated a limitation on its right to deal with them. It contends that, whereas Section 9(a) of the Act focuses on the employees' access to management, the Employer's speech focused on its own inability to deal with employees if the employees were to select union representation. We find the Employer's attempted distinction specious. Communication requires two parties. The Employer's statement that with a union it could not deal individually with employees about wages, benefits, hours, and problems implied that neither party would be able to approach the other to discuss on an individual basis any condition of employment, including grievances. In these circumstances, we find that the Employer threatened its employees with the loss of their right under Section 9(a) of the Act to present their individual grievances to it if they selected the Union to represent them. Accordingly, we sustain Objection 3, set aside the election, and direct that a second election be held as set forth below.

[Direction of Second Election and Excelsior footnote omitted from publication.]

All employees employed in the Advertising Department of the Employer including retail sales, zone/bureau retail sales, classified sales, national sales, sales services' typists and dispatchers, artists, layout clerks, co-op coordinator, and printer, excluding all other departments, guards and supervisors as defined in the Act.

² All dates are in 1981.

³ In the absence of exceptions, we adopt, *pro forma*, the Acting Regional Director's recommendation that Objections 1, 2, and 4 be overruled.

Sec. 9(a) provides:

[[]A]ny individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

⁵ Because we find that the statement constitutes a threat, we find it unnecessary to pass on the Acting Regional Director's finding that the statement constitutes a misrepresentation.